95-667

Supreme Court, U.S.
FILED
AUG 14 1995
CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

BRUCE GORDON JOHNSON, PETITIONER
vs.
STATE OF OREGON, RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF THE STATE OF OREGON

PETITION FOR WRIT OF CERTIORARI

BRUCE G. JOHNSON, *pro se*
2124 SILVER LEA COURT
EUGENE, OR 97404
(503)688-5100

17 pp

QUESTIONS PRESENTED

Do natural persons retain the rights to life, liberty, property, and substantive due process to a greater degree than do corporations?

May the Declaration of Independence and Preamble to the Constitution of The United States be read into the law of the land through Amendment IX, Amendment XIV, and Article IV § 4?

Shall States and/or their subsidiary governmental units be allowed to raise revenue under color of the police power?

Does the right to travel upon public highways include the right to transport oneself, one's family, and one's property in non-commercial passenger vehicles?

Do guarantees in Amendments VI and VII of jury trials in criminal and common law suits extend to "quasi-criminal" procedures?

Do measures passed by initiative require more rigorous judicial scrutiny?

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OREGON

JUDGMENTS BELOW 1

JURISDICTION 1

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 2

CONCLUSION 5

INDEX TO APPENDICES

Appendix A — Judgment of the District Court of the State of Oregon.

Appendix B — Judgment of the Court of Appeals of the State of Oregon.

Appendix C — Order denying review in the Supreme Court of the State of Oregon.

Appendix D — Article VI Section 4 of the United States Constitution, Amendments IV, VI, VII, VIII, IX, X, and XIV Section 1

Appendix E — 23 CFR Ch. II (4-1-94 Edition) Section 1204.4 Guide 7

Appendix F — ORS 811.210

TABLE OF AUTHORITIES CITED

CASES	PAGE(S)
Buck v.Kuykendall 267 US 307, 45 S.Ct. 324 (1925)	2
Butchers' Union, etc., Co. v. Crescent City, etc., Co. 111 US 746 (1884)	2, 3
Crandall v. Nevada 6th of Wallace 35, 18 L ed 745 (1868)	2
Liggett Co. v. Baldridge 278 U S 105, 49 S.Ct. 57, 73 L ed 204 (1928)	3
Meyer v. Nebraska 43 S.Ct. 625, 262 US 390 (1923)	3
Moore v. City of East Cleveland, Ohio 97 S.Ct. 1932 (1977)	4
North Dakota Pharmacy Bd. v. Snyder's Drug Stores, Inc. 414 US 156 (1973)	4
Pierce v. Society of the Sisters of the Holy Names, etc. 45 S.Ct. 571, 268 US 510 (1925)	3

STATUTES

United States Code
Title 28, Section 1257(3) 1

Code of Federal Regulations
23 CFR Ch. II (4-1-94 Edition) Section 1204.4 Guide 7 1

United States Constitution
Article IV Section 4 1
Amendment IV 1
Amendment VI 1
Amendment VII 1
Amendment VIII 1
Amendment IX 1
Amendment X 1
Amendment XIV Section 1 1

ANCIENT LEGAL MAXIM

De minimus non curat lex 4

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OREGON

Petitioner, Bruce G. Johnson, respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of Oregon affirming without opinion the judgment of Judge Cynthia Carlson in the District Court of the State of Oregon for Lane County that Oregon's law mandating use of seat belts in vehicles so equipped is repugnant to the United States Constitution.

JUDGMENTS BELOW

The Judgment of the District Court of the State of Oregon for Lane County is appears in Appendix A. The Judgment of the Court of Appeals of the State of Oregon appears in Appendix B. The Supreme Court of the State of Oregon's order denying review appears in Appendix C.

JURISDICTION

The Court of Appeals' judgment was filed on March 1, 1995. An order denying review was issued by The Supreme Court of the State of Oregon on May 16, 1995. This Court's jurisdiction is invoked under Title 28, U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 4 § 4 of the United States Constitution, Amendments IV, VI, VII, VIII, IX, X, XIV § 1 are set forth in Appendix D. 23 CFR Ch. II (4-1-94 Edition) Section 1204.4 Guide 7 is set forth in Appendix E. ORS 811.210 is reproduced in Appendix F.

STATEMENT OF THE CASE

Judge Cynthia Carlson sitting in District Court of the State of Oregon for Lane County hearing petitioner's appeal of a conviction in Central Lane Justice Court for failure to use seat belts in a vehicle which had them installed to restrain himself and his minor son. Prior to beginning the trial petitioner objected to the proceeding on numerous State and Federal Constitutional prohibitions. Among these were assertions that ORS 811.210 and Lane County's enforcement system violate constitutional protections guar-

anteed by clauses set forth in Appendix E. Judge Carlson ruled:

"... I am going to deny your motion to dismiss based on each of the grounds you have raised and I certainly urge you to continue with an appeal ... I think this is similar to the controversy that surrounds the mandatory wearing of helmets by motorcyclists ..."

Petitioner was convicted and the fine of $108 imposed in Justice Court was not modified. Upon appeal to the Court of Appeals of the State of Oregon her Judgment was affirmed without opinion. That Court did not schedule oral arguments. The Supreme Court of the State of Oregon denied review.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to restore certain non-commercial privileges and immunities which the State of Oregon, through the initiative, has sought, seeks, and will seek with ever increasing vigor to abridge. Certiorari, in this case which attempts to make a Federal Case of a traffic infraction, places a heavy burden upon all concerned to discriminate between this petition and 8,000 others which will probably be filed this term. It would be easy to view this petition as comic relief. The reasons to grant certiorari involve relationships of citizens to their government and each other which before 1960 were clear beyond explanation.

"All citizens of the United States, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in their own states." *Crandall v. Nevada,* 6th of Wallace 35, 18 L ed 745 (1868)

"The right to travel interstate by auto vehicle upon the public highways may be a privilege or immunity of the citizens of the United States. . . . A citizen may have, under the Fourteenth Amendment, the right to travel and transport his property upon them by auto vehicle." *Buck v. Kuykendall,* 267 US 307 at 314, 45 S.Ct. 324 at 325 (1925)

"As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the declaration of indepen-

dence, that new evangel of liberty to the people: "We hold these truths to be self-evident"—that is, so plain that their truth is recognized upon their mere statement—"that all men are endowed"—not by edicts of emperors, or decrees of parliament, or acts of congress, but "by their Creator with certain inalienable rights,"—that is, rights which cannot be bartered away, or given away, or taken away, except in punishment of crime—"and that among these are life, liberty, and the pursuit of happiness; and to secure these"—not grant them, but secure them—"governments are instituted among men, deriving their just powers from the consent of the governed." *Butchers' Union, etc., Co. v. Crescent City, etc., Co.,* 111 US 746 (1884) Justice Field concurring at 756-757

"While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska* 43 S.Ct. 625 at 626, 262 US 390 at 399 (1923)

"As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state." *Pierce v. Society of the Sisters of the Holy Names, etc.*, 45 S.Ct. 571 at 573, 268 US 510 at 535 (1925)

Apparently finding the above opinions insufficiently heeded by the states, the *Lochner* era Court perceived a need to go further:

"The police power may be exerted in the form a state legislation where otherwise the effect may be to invade rights guaranteed by the Fourteenth Amendment only when such legislation bears a real and substantial relation to public health, safety, morals, or some other phase of the general welfare." *Liggett Co. v. Baldridge*, 278 U S 105, 111-112, 49 S Ct 57, 73 L ed 204 (1928)

Justice Douglas' declaration that *Liggett* was "A derelict in the stream of the law", *North Dakota Pharmacy Bd. v. Snyder's Drug Stores, Inc.* 414 US 156 (1973), was retrenched somewhat in this Court's decision in *Moore v. City of East Cleveland*, Ohio 97 S.Ct. 1932 (1977) at 1937:

"Substantive due process has at times been a treacherous field for this Court. There *are* risks when the judicial branch gives enhanced protection to certain substantive liberties without the guidance of the more specific provisions of the Bill of Rights. As the history of the *Lochner* era demonstrates, there is reason for concern lest the only limits to such judicial intervention become the predilections of those who happen at the time to be Members of this Court. That history counsels caution and restraint. But it does not counsel abandonment . . ."

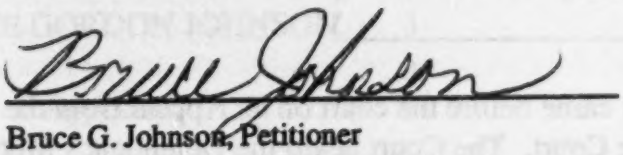
Refusal of this Court to grant certiorari in this case would be that abandonment. In the vast majority of cases where Americans are detained by police it is as a consequence of vehicle code infractions. So long as States claim a plenary right to legislate, that operation of an "auto vehicle" is a privilege granted by the state not a right secured by the state, and ignore the maxim *"De minimus non curat lex"*, progress toward the ideals expressed in The Declaration of Independence ceases. Any unsettled question or question settled sometime in the past favors the active over the indolent. There are few libertarian threads in the warp and woof of the law. Those which are there must be cherished. The law has been substituted for some perceived want of character at times and in places too numerous to mention. This Court is obliged to halt this folly.

CONCLUSION

There are doubtless thousands of petitions for writs of certiorari where refusal of this Court to issue the writ will cause greater discomfiture to the petitioners. There will be few which will have broader application to essential liberties.

DATED: August 11, 1995.

Respectfully submitted,



Bruce G. Johnson, Petitioner

IN THE DISTRICT COURT
OR THE STATE OF OREGON FOR LANE COUNTY

THE STATE OF OREGON, PLAINTIFF	)	Case No. 94-50028
vs.	)	JUDGEMENT
BRUCE GORDON JOHNSON, Defendant,	)	

THIS MATTER came before the court on an Appeal from the Central Lane Justice Court. The Court heard the Defendant's Motion to Dismiss and the testimony and arguments of Arthur West of the Lane County Sheriff's Office and of the Defendant. The Court denied the Defendant's Motion to Dismiss and found the Defendant guilty of the offenses of FAILURE TO USE SAFETY BELT and ENDANGERING A CHILD PASSENGER.

IT IS HEREBY ORDERED that the Defendant shall pay fine, costs and assessments previously ordered in the total amount of $108.00. This amount is satisfied from funds previously posted.

DATED this 11th day of August, 1994.

SIGNED August 26, 1994.

/s/ Cynthia D. Carlson
Cynthia D. Carlson
District Judge

Appendix A

FILED: March 1, 1995

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,	)	
	)	
Respondent,	)	Lane County District
	)	Cour No. 94-50028
v.	)	
	)	CA A85574
BRUCE GORDON JOHNSON,	)	
	)	
Appellant,	)	

Date argued or submitted on briefs: February 10, 1995

Before: Warren, Presiding Judge, and Edmonds and Armstrong, Judges

Attorney for Appellant: Bruce G. Johnson, pro se

Attorney for Respondent: Virginia Linder

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY
AND AWARD OF COSTS

Prevailing party: Respondent

[ ] No costs allowed.
[ ] Costs Allowed, payable by:

In an case in which a party could be represented by appointed counsel entitled to compensation under ORS 138.500, but the prevailing party is represented by retained counsel or appeared pro se, the prevailing party is allowed costs.

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON Respondent/Respondent	)	
	)	ORDER DENYING REVIEW
v.	)	
	)	CA A85573
	)	SC S42171
BRUCE GORDON JOHSON Appellant/Petitioner	)	

The Court has considered the petition for review and orders that it be denied.

DATE: May 16, 1995.

/s/ WALLACE P. CARSON, JR.
WALLACE P. CARSON, JR.
CHIEF JUSTICE

COPIES TO:

DAVID EVAN LEITH Attorney for Respondent/Respondent
BRUCE GORDON JOHNSON Attorney for Appellant/Petitioner

Appendix C

Article 4 Section 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people.

Appendix D1

Amendment XIV Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TRAFFIC COURTS

Each State in cooperation with its political subdivisions should have a program to assure that all traffic courts in it complement and support local and statewide traffic safety objectives. The program should provide at least that:

I. All convictions for moving traffic violations should be reported to the State traffic records system.

II. Program recommendations

In addition the State should take appropriate steps to meet the following recommended conditions:

A. All individuals charged with moving hazardous traffic violations are required to appear in court.

B. Traffic courts are financially independent of any fee system, fines, costs, or other revenue such as posting or forfeiture of bail or other collateral resulting from processing of violations of motor-vehicle laws.

C. Operating procedures, assignment of judges, staff and quarters insure reasonable availability of court services to alleged traffic offenders.

D. There is a uniform accounting system regarding traffic violation notices, collection of fines, fees and costs.

E. There are uniform rules governing court procedures in traffic cases.

F. There are current manuals and guides for administration, court procedures, and accounting.

ORS 811.210

811.210 Failure to use safety belts; penalty. (1) A person commits the offense of failure to use safety belts if the person:

(a) Operates a motor vehicle on the highways of this state and is not properly secured with a safety belt or safety harness as required by subsection (2) of this section;

(b) Operates a motor vehicle on the highways of this state with a passenger who is under 16 years of age and the passenger is not properly secured with a child safety system, safety belt, or safety harness as require by subsection (2) of this section; or

(c) Is a passenger in a motor vehicle on the highways of this state who is 16 years of age or older and who is not properly secured with at safety belt or safety harness as require by subsection (2) of this section.

(2) To Comply with this section:

(a) A person who is under 4 years of age and weighs 40 pounds or less must be properly secured with a child safety system that meets the minimum standards and specifications established by the Department of Transportation under ORS 815.055 for child safety systems designed for children weighing 40 pounds or less; or

(b) A person who is at least 4 years of age or weighs more than 40 pounds must be properly secured with a safety belt or safety harness that meets requirements under ORS 815.055.

(3) The offense described in this section, failure to use safety belts, is a Class D traffic infraction. [1985 c.16 §309; 1985 c.619 §1; 1991 c.2 §1; 1993 c.153 §1; 1993 c.751 §112]